THE

AMERICAN LAW REGISTER.

AUGUST 1886.

FELLOW-SERVANTS.

ONE of the most important rules in the law of negligence is that a master is not liable to his servant for an injury caused by the negligence of a fellow-servant. The purpose of this paper is to show the meaning of the term "fellow-servant," as used in this rule.

It is not to be supposed that all the very numerous cases upon this subject can be reconciled; the most that can be done is to group them together in such a way as to show the different principles upon which they are based. Knowing these principles we can see the reason for the decision in any particular case.

The first instance of the application of the rule of fellow-servants is found in the case of *Murray* v. *Railroad Co.*, 1 McMullen (S. Ca.) 385 (1841); *Priestley* v. *Fowler*, 3 M. & W. 1 (1837), often cited as the first case upon the subject, is not an authority as to fellow-servants, for it is not stated therein by whose negligence the injury to the servant was caused. In the South Carolina case a fireman of a locomotive, injured by the negligence of the engineer, was held not entitled to recover from the common master, the railway company; the fireman and the engineer were fellow-servants.

The next case, and the leading one upon the subject was *Farwell* v. *Railroad Co.*, 4 Metc. 49 (1842); here the defendant railway company was held not liable to one of its engineers for an injury caused by the negligence of a switch-tender in its employ. In the opinion of the court (SHAW, C. J.), it is said: "They are appointed and employed by the same company to perform separate and distinct

duties, all tending to the accomplishment of one and the same purpose—that of the safe transmission of the trains." And again, "When the object to be accomplished is one and the same, when the employers are one and the same, and the several persons employed derive their compensation and authority from the same source," the rule is to apply, and all such servants are fellow-servants.

From a comparison of many cases upon the subject we may form the following definition: All servants employed by the same master, working under the same control and in a common employment, are fellow-servants.

It thus appears that those servants are fellow-servants who are

I. *Employed by the same master*, and

II. *Under the same control*, and

III. *In a common employment.*

It is therefore necessary to know who are, and who are not regarded as falling within these terms.

I. *What servants are employed by the same master.*—There is generally little difficulty in determining this. Those servants who "derive their authority and compensation from the same source," are employed by the same master.

It is to be noted, however, that not every one who is employed by another is a servant. An independent contractor to whom work has been let out, and who has entire charge of such work, is not a servant. Therefore, he is not a fellow-servant of his employer's servants: *Mayhew* v. *Mining Co.*, 76 Me. 100 (1884). All servants of such a contractor are his only, and not those of the party engaging the contractor. Hence, servants of the contractor and those of the contractor's employers are not fellow-servants, because they are not servants of the same master; for example: a servant of a contractor engaged by a railroad company to build a wall alongside a road-bed, is not a fellow-servant of the servants of the company in charge of a passing train: *Goodfellow* v. *Railroad Co.*, 106 Mass. 461 (1871); see also *Young* v. *Railroad Co.*, 30 Barb. 229 (1859); *Abraham* v. *Reynolds*, 5 H. & N. 143 (1860). But if the employer of the contractor has control and direction of the contractor's servants, such servants are not servants of the contractor exclusively, but of the employer of the contractor also; and hence they are fellow-servants of the employer's other servants in the same employment: *Johnston* v.

Boston, 118 Mass. 114 (1875); *Wiggett* v. *Fox*, 11 Exch. 832, (1856); *Ewan* v. *Lippincott*, 47 N. J. L. R. 192 (1885).

II. *What servants are under the same control.*—Many of the early cases regarded all servants as under the same control who were employed by the same master, for all such are subject to the same ultimate authority. It did not matter what the relative ranks of the servants might be; nor that one had the direction and control of the other; nor that one had power to hire and discharge the other. In accordance with this view, a superintendent having the entire charge of a factory, with authority to hire and discharge the operatives, was held a fellow-servant with one of the latter: *Albro* v. *Agawam Canal Co.*, 6 Cush. 75 (1850).

Such a view as to what servants are under the same control does not now generally prevail; for there is this limitation put upon it: Where the master takes no part in the business, but intrusts the entire control and management to a superintendent or manager, such person stands in the place of the master, and is not a fellow-servant of the servants under him. Such a person is often called a vice-principal of the master—sometimes is said to be the master's *alter ego*. The meaning of these terms is the same—one who is put by the master in the master's place and represents him towards the other servants.

This principle is well expressed in these words: "When the general management and control of an industrial enterprise is delegated to a superintendent with full power to hire and discharge servants, to direct their labors and obtain and employ suitable means and appliances for the conduct of the business, such superintendent stands in the place of the master," and is not a fellow-servant of those under his control: *Pantzar* v. *Mining Co.*, 99 N. Y. 368 (1885).

Instances of the application of this rule are numerous; the following cases illustrate it:

The owner of slaughter-yards employed an agent to manage them, with full power over them and the workmen in them; the agent was held not a fellow-servant of a workman employed by him in the yards: *Mitchell* v. *Robinson*, 80 Ind. 281 (1881).

The owners of a cotton mill intrusted to a general superintendent its entire charge and management, with power to purchase supplies and to hire and discharge the operatives; such a superintendent was not a fellow-servant of the operatives under his control: *Corcoran* v. *Holbrook*, 59 N. Y. 517 (1875).

Besides the above, the following late cases are directly in point: *Ryan* v. *Bagaley*, 15 Mich. 179 (1883); *State* v. *Malster*, 57 Md. 287 (1881); *Mayhew* v. *Mining Co.*, 76 Me. 100 (1884); *Ry. Co.* v. *Jones*, 86 Penn. St. 432 (1878).

The same principle was adopted in a number of English cases (see *Murphy* v. *Smith*, 19 C. B. (N. S.) 360 (1865)), and was regarded as settled law until the case of *Wilson* v. *Merry* was decided in the House of Lords in 1868, in which it was wholly rejected; L. R., 1 H. L. 326. Lord BLACKBURN, commenting upon this case, says: "The decision of the House of Lords is distinct that the fact that the servant held the position of vice-principalship, does not affect the non-liability of the master for his negligence as regards a fellow-servant:" *Howell* v. *Steel Co.*, L. R., 10 Q. B. 62 (1874).

The later Massachusetts cases have approved of the rule adopted in *Albro* v. *Agawam Canal Co.*, above referred to; and hence the English rule and the Massachusetts one is the same. According to it, all servants are under the same control who serve the same master, although the one may in fact occupy the master's place toward the other; and the generally accepted idea of vice-principalship is not recognised.

According to the great weight of opinion, the relation of fellow-servants is not changed by the mere fact that one servant is of higher rank in the service than the other, and has power to direct and control him; (see cases following.) Unless one be a vice-principal, all servants of the same master are under the same control, without regard to their relative grade. The most frequent instances of this are the cases of foremen and conductors.

A foreman seldom has power to hire and discharge workmen; he does not act entirely upon his own judgment, being subject generally to the orders and control of a superintendent: he works hand to hand with those under him; in short, he has not the entire charge and control of the business or any department of it. Hence, he is generally held to be a fellow-servant with the workmen under his direction. This has been in terms decided in the following cases—the latest upon this particular point: *Doughty* v. *Penobscot Co.*, 76 Me. 143 (1884); *Brick* v. *Rd. Co.*, 98 N. Y. 211 (1885); *Canal Co.* v. *Carroll*, 89 Penn. St. 374 (1879); *Indiana Car Co.* v. *Parker*, 100 Ind. 181 (1884); *Peschel* v. *Rd. Co.*, 62 Wis. 338 (1885); *State* v. *Malster*, 57 Md. 287 (1881).

Much the same is the position of a conductor of a railway train

towards the other servants upon it; having no general delegation of authority over them, and not being given the entire charge of any branch of the business of running the road, he is considered, by most of the cases, a fellow-servant of such other servants. The latest cases deciding this point are: *Cassidy* v. *Rd. Co.*, 76 Me. 488 (1884); *Slater* v. *Jewett*, 85 N. Y. 61 (1881); *Smith* v. *Potter*, 46 Mich. 258 (1881); *Pease* v. *Rd. Co.*, 61 Wis. 163 (1884).

But the rule that different ranks in service does not alter the relation of fellow-servants as between servants of the same master has not been universally accepted. A contrary view has been upheld in a number of states, and has been lately recognised and adopted in the Supreme Court of the United States.

In Ohio, it has long been settled that any one placed in authority over the servant, with power to control and direct him in the performance of his duties, is the *alter ego* of the master; or as has been more concisely said: "A servant is not a fellow-servant with one to whom he is subordinate." Hence a foreman is held not a fellow-servant of a workman under his control; a brakeman under the control of a conductor of a train is not a fellow-servant of such conductor: *Railroad Co.* v. *Keary*, 3 Ohio St. 201 (1854); *Railroad Co.* v. *Lavalley*, 36 Id. 221 (1880).

In holding a foreman of a lumber yard of a railway company, who had power to hire and discharge the laborers under his control, not a fellow-servant of such laborers, the Supreme Court of Illinois said: "When a railway corporation confers authority upon one of its employees to take charge of and control a gang of men in carrying on some particular branch of its business, such employee is the direct representative of the company" towards the men under his control: *Railroad Co.* v. *May*, 108 Ill. 288 (1884).

In Tennessee it is said that "the only sound rule is to hold the common superior (in this case the railway company), which can only act through its agents, responsible for all injuries resulting to the subordinate from the negligence of his immediate superior, or the party having control over him." And the court approves of the remark of Judge REDFIELD, that "we would be content to treat all subordinates who were under the control of a superior, as entitled to hold such superior as representing the master:" Redfield on Railways, I. 529 *n.*; *Railroad Co.* v. *Bowler*, 9 Heisk. 866 (1872).

The same rule prevails in North Carolina and Virginia: *Cowles* v. *Railroad Co.*, 84 N. C. 309 (1881); *Moon* v. *Railroad Co.*, 20 Cent. L. J. 33 (1885); s. c. 78 Va. 745.

The Supreme Court of the United States, by a divided court, has adopted the same view in the case of *Railroad Co.* v. *Ross*, 112 U. S. 377 (1884); s. c. 24 Am. Law Reg. (N. S.) 94. It is there said: "There is, in our judgment, a clear distinction to be made in their relation to their common principal, between servants of a corporation exercising no supervision over others engaged with them in the same employment, and agents of the corporation, clothed with the control and management of a distinct department, in which their duty is entirely that of supervision and direction. A conductor, having the entire control and management of a railway train, occupies a very different position from the brakeman, the porters and the others employed." And again: "The conductor of a railway train, who commands its movements, directs when it shall start, at what stations it shall stop, at what speed it shall run, and has the general management of it and control over the persons employed upon it, represents the company," and is not a fellow-servant of such other persons. And the court affirmed the ruling of the judge below, that as the relation of superior and inferior was created between the conductor and engineer in the operation of the train, they were not fellow-servants within the reason of the law.

How far this decision will be followed in the various states it is of course, impossible to say. Its principle has been already adopted, however, in the conservative state of Connecticut in a case in which a train dispatcher and engineer were held not to be fellow-servants. The court says: "To make no discrimination, but in all cases to place those who are invested with authority to direct and control on the same footing with those whose duty it is to merely perform as directed without discretion and without responsibility, seems to us unwise and impolitic:" *Darrigan* v. *Railroad Co.*, 52 Conn. 285 (1884); s. c. 24 Am. Law Reg. (N. S.) 452. And the court fully approves of the principles of the English "Employers Liability Act"

This Act (43 & 44 Vict. c. 42, 1880,) changes almost entirely the rule laid down by the English courts, and provides, in substance, as follows, concerning this division of our subject: "Workmen or their representatives shall have a right of action against

their employers for injuries or death happening 1. By reason of the negligence of any one having superintendence intrusted to him. 2. By reason of the negligence of any person to whose orders the workman was bound to conform."

It will be observed that this statute seems to be based upon the principle which some of our courts have insisted upon as the only just and wise one; and that it aims to bring about, by legislative act, that which those courts, guided by what they consider proper policy, have accomplished of their own motion.

III. *What servants are in a common employment.*—The rule generally laid down in reference to this, is that all servants of the same master, whose labors tend to the accomplishment of the same general purpose, are in a common employment. Hence, all servants engaged in operating a mine, or railway, or factory, are within the rule. It was argued by counsel in *Farwell* v. *Railroad Co.*, before referred to, that what is now known as the rule of fellow-servants, should not apply in cases where servants are employed in different departments of duty, having no connection with and at a distance from one another, and where one could in no way observe or influence the conduct of the other. But to this the court replied that the distinction would be very difficult to apply practically; that to distinguish one department of duty from another would be impossible in many cases, and that therefore such a rule could not be adopted.

This view has been strictly adhered to in Massachusetts ever since the above case was decided. In a late case, *Holden* v. *Railroad Co.*, 129 Mass. 268 (1880), it was said: "It is well settled in this commonwealth and in Great Britain that the rule of fellow-servants is not confined to the case of two servants working in company, or having opportunities to control or influence the conduct of each other, but extends to every case in which the two, deriving their authority and compensation from the same source, are engaged in the same business, though in different departments of duty."

In a noted English case, *Bartonshill Coal Co.* v. *McGuire*, 3 Macq. H. L. C. 300 (1858), a much more limited view was taken. It was said that "in each case it is necessary to ascertain whether the servants are fellow-laborers in the same work, and that where servants are engaged in different departments of duty, an injury committed by one servant upon another by carelessness or negli-

gence in the course of his peculiar work, is not within the exemption." And in the same opinion, speaking of a case where the Scotch court held that a carpenter engaged in repairing a railway carriage was not in a common employment with an engine-driver and the person who arranged the switches, Lord Chancellor CHELMSFORD said the case might be reconciled with the English authorities, on the ground that the workmen were engaged in totally different departments of duty.

Later English cases, however, rejected this view, and the settled opinion came to be that servants are in a common employment although the object on which one is employed is "very dissimilar from that on which the other is employed," and in the case of railway employees it is said that "whenever the employment is such as necessarily to bring the person accepting it into contact with the traffic of a line of railway" the rule of common employment is to apply. The same principle governs in the case of employees of any industrial enterprise: *Morgan* v. *Rd. Co.*, L. R., 1 Q. B. 149 (1865). This view has been adopted in the courts of most of the states; and it can be stated as the general rule, that all servants of the same master, engaged in the same general business, though in different departments of it, are fellow-servants in a common employment.

The following cases are in point: an engineer of a locomotive is in a common employment with a telegraph operator employed by the railway company: *Slater* v. *Jewett*, 85 N. Y. 61 (1881); the managers of different departments of a mine, subject to the orders of a general superintendent: *Railroad Co.* v. *Jones*, 86 Penn. St. 432 (1878); a track repairer and a fireman of a passing train: *Dick* v. *Railroad Co.*, 38 Ohio St. 389 (1882). See also to the same effect, *Smith* v. *Iron Co.*, 42 N. J. L. R. 467 (1880); *Doughty* v. *Penobscot Co.*, 76 Me. 143 (1884); *Wonder* v. *Railroad Co.*, 32 Md. 411 (1870); *Quincy Co.* v. *Kitts*, 42 Mich. 34 (1879); *Roberts* v. *Railroad Co.*, 33 Minn. 218 (1885).

But there are two limitations upon the rule just given. One of these is well settled; the other is perhaps no more than a mere denial of the general rule.

1. Those persons who are charged with the performance of a duty which the master owes to his servants are not in a common employment with such servants.

2. Those servants, who though employed by the same master, and working for the same general purpose are yet in such different kinds

of service that they are not in a common employment with each other.

1. "The true rule is to hold the corporation [master] liable for negligence or want of proper care in respect to such acts and duties as it is required to perform and discharge as master or principal, without regard to the rank or title of the agent intrusted with their performance; as to such acts the agent occupies the place of the corporation:" *Flike* v. *Railroad Co.*, 53 N. Y. 549 (1873); see also cases *infra*.

The chief class of cases under this limitation is that arising from the negligence of servants employed to select safe and suitable machinery and to keep it in repair. To select such machinery and to keep it in repair is a duty which the master owes his servants; all persons of whatever grade, to whom the master has intrusted this duty are his personal representatives, and are not in a common employment with those servants who use such machinery.

The leading case upon this point is *Ford* v. *Rd. Co.*, 110 Mass. 240 (1872), in which it is said: "The agents, who are charged with the duty of supplying safe machinery, are not to be regarded as fellow-servants of those who are engaged in operating it. They are charged with the master's duty to his servant. They are employed in distinct and independent departments of service." And further, the master is "equally chargeable whether the negligence was in originally failing to provide, or in afterwards failing to keep its machinery in safe repair."

The rule is illustrated in the following cases. The mechanics to whom the making of repairs in engines is intrusted, are not in a common employment with an engineer: *Fuller* v. *Jewett*, 80 N. Y. 46 (1880); the master of mechanics, whose duty it is to select and purchase engines, is not in a common employment with a fireman: *Rd. Co.* v. *Moran*, 44 Md. 283 (1875). See, also, the following cases directly in point: *Shanny* v. *Mills*, 66 Me. 420 (1877); *Rd. Co.* v. *Herbert*, 116 U. S. 642 (1886); *Wilson* v. *Willimantic Co.*, 50 Conn. 433 (1883); *Brabbits* v. *Rd. Co.*, 38 Wis. 289 (1875); *Rd. Co.* v. *Avery*, 109 Ill. 314 (1884); *Rd. Co.* v. *Leslie*, S. C. Penn., 20 Rep. 55 (1885).

Another duty which the master owes his servants is that of selecting and employing competent fellow-servants; and it is held, that those agents to whom this duty is intrusted are not in a common

employment with the other servants, because they are charged with the master's duty towards his servants.

A superintendent intrusted with the duty of employing conductors, employed an incompetent one; the superintendent is not a fellow-servant of an engineer injured by the negligence of the conductor: *Rd. Co.* v. *Decker*, 84 Penn. St. 419 (1877). See, also, to the same effect: *Mann* v. *Rd. Co.*, 91 N. Y. 495 (1883); *Quincy Co.* v. *Kitts*, 42 Mich. 34 (1879).

Another duty which the master, where a railway company, owes the servants, is the duty of keeping the road-bed in proper repair. Hence, those who are charged with this duty are not fellow-servants with those who use the road-bed. Hence, it is held that a bridge-builder and road-master are not fellow-servants of a fireman injured through the negligence of the former in failing to properly inspect and care for a culvert of the road-bed of a railway: *Davis* v. *Rd. Co.*, 55 Vt. 84 (1882). See also, *Drymala* v. *Thompson*, 26 Minn. 40 (1879).

There are, of course, other duties which a master owes to his servants: as, the duty of providing a safe place to work in; the duty of supplying a sufficient number of servants for the safe carrying on of the business in hand. In regard to these and other duties it is not doubted that those intrusted with their performance will be held not to be in a common employment with the other servants, when proper cases are presented to the courts.

It sometimes is a question, whether or not certain acts are acts which it is the duty of the master to perform, and for the negligent performance of which he is to be held responsible to his servants. For example: the inspection of railway cars has been held in some courts to be a duty of the master to his servants, but in others has been held not to be. Hence, decisions as to whether those charged with this duty are in a common employment with other servants or not, are conflicting, depending upon the view the court takes as to its being a master's duty or not. The discussion of this, however, is foreign to our subject: *Tierney* v. *Rd. Co.*, 33 Minn. 311 (1885); s. c. 24 Am. Law Reg. (N. S.) 669; *Smith* v. *Potter*, 46 Mich. 258 (1881).

2. We have seen what the general view is as to the meaning of "common employment," and what servants are considered as within its terms. In the face of that view our second limitation seems a mere contradiction. Yet it is adopted by a number of

learned courts, and is entitled to consideration. It is, in brief, that servants of the same master may be in such different departments of the same general business that they are not to be held fellow-servants.

In *Baird* v. *Pettit*, 70 Penn. St. 477 (1872), the defendant's business was the manufacture of locomotives, and the plaintiff was in his employ as draughtsman; the latter was injured by the negligence of carpenters working about the buildings. "The workmen by whose negligence he was injured were not engaged in the manufacture of engines nor in the performance of any service connected with the business;" they were, therefore, not in a common employment with the plaintiff.

This is plainly a departure from the rule hereinafter stated; other courts have gone still further.

In Illinois, it is held that to constitute common employment "it is essential that the servants were actually co-operating at the time of the injury in the particular business in hand, or that their usual duties should bring them into habitual consociation, so that proper caution would be likely to result." Hence, a fireman upon a locomotive and a track-repairer are not in a common employment: *Railroad Co.* v. *Moranda*, 93 Ill. 302 (1879); *Railroad Co.* v. *O'Connor*, 77 Id. 391 (1875).

In Kentucky, it is said that common laborers "in their employment having nothing to do with the cars or the running of them, are like the corporation's mere wood-choppers, comparative strangers to the engineer and his running operations. They are, therefore, 'not in the same service' with the engineer and his co-operators who are in a different sphere, and constitute a distinct class:" *Railroad Co* v. *Collins*, 2 Duvall 114 (1865); s. c. 78 Va. 745.

Cases in Tennessee and Virginia are to the same effect; *Railroad Co.* v. *Carroll*, 6 Heisk. 347 (1871); *Moon* v. *Railroad Co.*, 20 Cent. L. J. 33 (1885).

In the case of *Randall* v. *Railroad Co.*, 109 U. S. 428 (1883), the Supreme Court of the United States seems to have indicated, by implication at least, a leaning towards the same view. It is there said of two servants, who were held fellow-servants, "The duties of the two bring them to work at the same place, at the same time, so that the negligence of one in doing his work may injure the other in doing his work. Their separate services have an immediate common object—the moving of the trains." This would seem

to imply that if their duties did not bring them to work at the same time and place, and if their separate services did not have an immediate common object, they would not be in the same employment, and this view has been taken in a Federal Circuit Court in a case which decides that "a common hand engaged in distributing nails alongside of a track, and under the control of a foreman, is not in the same employment as a man controlling and managing a switch-engine not used in carrying these nails, but in moving from one place to another cars not engaged in the business of relaying said tracks: *Garrahy* v. *Railroad Co.*, 25 Fed. Rep. 258 (1885).

The English "Employers Liability Act." before referred to, provides, in substance, concerning this division of our subject, that "a workman or his representatives shall have a right of action against his employer for injuries or death happening, 1. By reason of defects in ways, works, machinery or plant, arising from an employee's negligence. 2. By reason of the negligence of any employee, having charge or control of any signal, points, locomotive engine or train upon a railway.

These provisions place the employees referred to in them in different employments from the other servants of the master, thus changing materially the rules laid down by the English cases. Taking these provisions in connection with those before referred to, the act almost entirely abolishes the law of fellow-servants in England.

It is not very creditable to the English judges that Parliament has almost wholly done away with, provisionally at least, a rule which is entirely judge-made; which has been insisted upon as founded in justice and required by expediency, and which has been extended and broadened for forty years, in pursuance of a policy which has now been abolished by Parliament as unwise and unjust.

The law as to fellow-servants may be summarized as follows:

In Great Britain the common-law rules have been almost wholly abolished by statute.

The same thing has been done, as regards railway employees, in Georgia: Rev. Code, sect. 2083, 3036; Wisconsin: Rev. Stat., sect. 1816; Kansas: Compiled Laws, sect. 5204, and Iowa: Rev. Code, sect. 1307.

In Massachusetts all servants of the same master are fellow-servants, except that those who select and repair machinery are not fellow-servants of those who use it.

In most of the other states the rule is the same, except that the doctrine of vice-principalship is recognised, and except that *all* those who are charged with the master's duty towards the servants are representatives of the master, and are not fellow-servants of the other servants.

In some states and in the Federal courts there is the further limitations that no servant is a fellow-servant of one to whom he is subordinate, and that servants in different departments of duty are not fellow-servants of each other.

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RECENT AMERICAN DECISIONS.

Supreme Court of Pennsylvania.

BRIGGS v. GARRETT.

Citizens and voters have the constitutional right publicly to discuss and canvass the qualifications of candidates for public office, and information honestly communicated by one citizen to others at a public meeting, to the effect that a candidate for such office had been charged by a reputable citizen with grave misconduct, is a privileged communication, and the person communicating such information is not liable to an action for libel therefor, although the charge was false in fact and its falsity could have been discovered by inquiry.

Such communication being privileged, legal malice is not inferable, and on the trial of a civil action for libel against the party who made the communication the court is justified, in the absence of proof of actual malice, in entering a nonsuit.

The fact that reporters of the public press were present at the meeting at which such privileged communication was made is immaterial.

At a meeting of a body of citizens of Philadelphia, styled the "Committee of One Hundred," assembled for the purpose of considering the merits of candidates for public office, a letter reflecting severely upon the character of one of the judges of the Common Pleas, who was a candidate for re-election, by statements subsequently acknowledged to be wholly untrue, was, by order of the chairman, read by the secretary, and appeared at length the following day in the daily papers. *Held*, that the communication being based upon probable cause, was proper for discussion at such a meeting, and the court will not reverse a judgment of nonsuit entered in an action for libel brought against the chairman of the meeting.

MERCUR, C. J., and GORDON and STERRETT, JJ., dissent.

ERROR to Common Pleas No. 1, Philadelphia county.

Reargument. Case, by Amos Briggs against Philip C. Garrett, for libel. Plea, not guilty.